

TODD F. STEVENS (SBN 137842)  
MARY M. BEST (SBN 110220)  
**KEENEY WAITE & STEVENS**  
A Professional Corporation  
402 West Broadway, Suite 1820  
San Diego, CA 92101  
Telephone: (619) 238-1661  
Facsimile: (619) 231-1897

Attorneys for Defendants MIDLAND CREDIT MANAGEMENT, INC. AND MIDLAND  
FUNDING LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

DOUGLAS E. BELLOWS,

Plaintiff,

v.

MIDLAND CREDIT MANAGEMENT,  
INC. AND MIDLAND FUNDING LLC,

Defendants.

Case No. 09 CV 1951 LAB WMC

**PETITION FOR ORDER  
COMPELLING ARBITRATION**

Date: March 22, 2010

Time: 11:15 a.m.

Courtroom: 9

Judge: The Hon. Larry A. Burns

Trial: None Set

Petitioners, Midland Credit Management Inc. and Midland Funding LLC, (collectively  
“Midland”) allege as follows:

1. On July 22, 2003, Plaintiff was issued a HSBC Bank Nevada, N.A. credit card (with  
the last four digits of 5594) (the “Account”). When Plaintiff received the credit card for the  
Account, it was accompanied by a Cardmember Agreement (the “Agreement”) containing an  
Arbitration Clause. Declaration of Stuart Austin, ¶2; a copy of the Agreement containing the  
Arbitration Clause is attached to the Declaration of Stuart Austin as Exhibit A.

2. After the issuance and use of the Account, Plaintiff did not pay the outstanding  
balance on the Account. The Account was then purchased by Atlantic Credit & Finance Special  
Finance Unit, LLC. Declaration of Brian Frary, ¶2. Thereafter in April 2009, the Account was  
assigned to Midland. (*Id.*)

///

1           3. Notwithstanding the existence of a valid arbitration clause, Plaintiff has commenced  
2 the present action.

3           4. Plaintiff's First Amended Complaint ("FAC") asserts a class action claim for the  
4 alleged debt collection practices of Midland which fall within the ambit of the Arbitration Clause.  
5 Specifically, Plaintiff alleges that Midland included in a "dunning letter" a "privacy notice" pursuant  
6 to the Gramm-Leach-Bliley Act ("GLBA") [15 USC §6801, *et seq.*]. Plaintiff claims that Midland's  
7 "privacy notice" violates the Fair Debt Collection Practices Act ("FDCPA") [15 U.S.C. §1692 *et*  
8 *seq.*] and the California Rosenthal Act [Cal.Civ. Code §1788 *et seq.*]. The operative Arbitration  
9 Clause (Exhibit A) states, in pertinent part:

10           **ARBITRATION**

11           You agree any claim, dispute, or controversy (whether based upon  
12 contract; tort, intentional or otherwise; constitution; statute; common  
13 law; or equity and whether pre-existing, present or future), including  
14 initial claims, counter-claims, cross-claims and third party claims,  
15 arising from or relating to this Agreement or the relationships which  
16 result from this Agreement, including the validity or enforceability of  
17 this arbitration clause, any part thereof or the entire Agreement  
18 ("Claim"), shall be resolved upon the election of you or us, by binding  
19 arbitration pursuant to this arbitration provision and the applicable  
20 rules or procedures of the arbitration administrator selected at the time  
21 the Claim is filed. The party initiating the arbitration proceeding shall  
22 have the right to select one of the following three arbitration  
23 administrators: the National Arbitration Forum ("NAF"), the American  
24 Arbitration Association ("AAA") or JAMS....

25           5. The FAC alleges Plaintiff is "obligated or allegedly obligated to pay a debt ..." (§17)  
26 and that he is a "natural person from whom a debt collector sought to collect a consumer debt" (§19).  
27 Further, the FAC alleges that "this case involves money, property or their equivalent due or owing  
28 or alleged to be due or owing ... (§21). Plaintiff goes on to allege that his "allegedly defaulted debt  
was purchased by, assigned to, placed or otherwise transferred to" Midland for collection. (§§ 33  
and 34). Thus, the claims asserted in the FAC arise out of allegations regarding debt collection on  
the Account and are therefore subject to arbitration.

6. On October 9, 2009, attorneys for Midland sent Plaintiff's counsel a letter requesting  
that Plaintiff agree to voluntarily adjudicate this lawsuit by arbitration, as required under the  
Agreement. A copy of that letter is attached to the Declaration of Todd F. Stevens as Exhibit B.

///

1 Plaintiff's counsel responded stating that they would not agree to arbitration. A copy of Plaintiff's  
2 counsel's letter is attached to the Stevens' Declaration as Exhibit C.

3 WHEREFORE, Midland prays for an order compelling arbitration of the controversy in  
4 accordance with the Arbitration Agreement and for such other and further relief as the Court deems  
5 proper.

6 Dated: December 29, 2009

**KEENEY WAITE & STEVENS**  
A Professional Corporation

7  
8 By: s/ Todd F. Stevens  
9 Todd F. Stevens  
10 Attorneys for Defendants MIDLAND  
11 CREDIT MANAGEMENT, INC. AND  
12 MIDLAND FUNDING LLC  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28